



June 25, 2002

Mr. Henry W. Prejean  
Assistant District Attorney  
County of Brazoria  
111 E. Locust Street  
Suite 408A  
Angleton, Texas 77515

OR2002-3434

Dear Mr. Prejean:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164775.

The Brazoria County Juvenile Probation Department (the "department") received a request for all records and reports pertaining to a named individual. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with sections 58.005, 58.007, and 58.106 of the Family Code. We have considered the exception you claim and reviewed the submitted information.

We note at the outset that the records you submitted to this office are not subject to the provisions of the Public Information Act (the "Act"). The Act generally requires the disclosure of information maintained by a "governmental body." However, while the Act's definition of a "governmental body" is broad, it specifically excludes "the judiciary." See Gov't Code § 552.003(1)(A), (B). In determining whether a governmental entity falls within the judiciary exception to the Act, this office looks to whether the governmental entity maintains the relevant records as an agent of the judiciary in regard to judicial, as opposed to administrative, functions. See Open Records Decision No. 646 at 2-3 (1996) (citing *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ)). In Open Records Decision No. 646 (1996), this office determined that specific records regarding individuals on probation and subject to the direct supervision of a court that are held by a community supervision and corrections department fall within the Act's judiciary exclusion because such records are held on behalf of the judiciary. See also Open Records Decision No. 236 (1980) (records of an adult probation office, indicating whether probationers

are complying with terms of probation, are records of the judiciary and not subject to the Act). Because we find that the information you seek to withhold constitutes the records of an individual on probation that are maintained by the department at the direction of the juvenile court as part of the court's judicial function, we conclude that the documents at issue are records of the judiciary. Thus, the department has no obligation under the Act regarding the release of the records at issue.<sup>1</sup> As we are able to make this determination, we need not address your claimed exceptions.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body.

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<sup>1</sup>The release of the requested information is within the discretion of the court, acting through its agent, the department. See Open Records Decision No. 646 at 4 n. 3 (1996) (citing Open Records Decision No. 236 at 2-3 (1980)).

*Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/jh

Ref: ID# 164775

Enc. Submitted documents

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